

DRAFT AIA[®] Document B101[™] – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the « » day of «May» in the year «2016»
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

«City of Durham»«City of Durham»
«101 City Hall Plaza
Durham, NC 27701»
«Telephone Number: (919)-560-4197»
«Fax Number: (919)-560-4970»

and the Architect:
(Name, legal status, address and other information)

«Kimley-Horn and Associates, Inc.»«Kimley-Horn and Associates, Inc.»
«421 Fayetteville Street, Suite 600
Raleigh, NC 27601»
«Telephone Number: (919)-835-1494»
« »

for the following Project:
(Name, location and detailed description)

«Accessibility Improvements at Valley Springs Park and West Point on the Eno Park»
«Valley Springs Park-3805 Valley Springs Road, Durham, NC 27712
West Point on the Eno Park-5101 N Roxboro St., Durham, NC 27704»
« »

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

« See Exhibit A, Initial Information »

§ 1.2 Subject to change by the Owner and as provided herein, the Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

«Valley Springs July 2017 »

.2 Substantial Completion date:

«Valley Springs February 2018 »

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall, when appropriate, adjust the terms of this Agreement by amendment with a written and duly executed instrument.

§ 1.4 The Services covered by this Agreement are subject to the Owner-approved Stated Limitation on Cost of the Work (SLCW) as specified in Section A.1.3 of Exhibit A. In the absence of an express provision to the contrary in

this Agreement, the Architect shall perform the required Services in a manner that will render a Cost of the Work (as that term is defined in Article 6 herein) that does not exceed the most current Owner-approved SLCW.

§ 1.5 Architect represents and warrants that it is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital to complete the Services and perform its obligations under this Agreement and under the Contract Documents. Architect further represents, warrants, and acknowledges that: (a) it is a business entity that possesses a high level of experience and expertise in professional design services and contract administration of projects of similar or like size, complexity, and nature as the above-noted Project; (b) the Owner is relying on Architect's representations herein that it possess sufficient skill, knowledge, expertise, and ability to fully perform the Services and its obligations under this Agreement; (c) the Architect will assign to this Project similarly qualified individual professional architects, managing those professionals as needed to deliver that quality of performance; and (d) the Basic Services Fee provided for herein is adequate compensation for timely performance of the Basic Services.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement. The Architect will provide all professional services necessary for the complete design and construction documentation of the Project. The Architect agrees that the Basic Services Fee, as stated in Article 11, represents adequate and sufficient compensation for its timely provision of all professional Basic Services (including those of its consulting structural, mechanical, electrical, plumbing, and civil, and other consulting engineers) necessary to completely design the Project and prepare Construction documents that fully indicate the requirements of construction of the Work, whether or not those Services are individual listed or referred to in this Agreement, the only exceptions to this being: (1) the cost of those services that are provided by third parties and that are expressly designated herein as being "the Owner's responsibility" or "owner-provided"; and (2) the cost of those engineering or consulting Services that become necessary as a result of an Owner-directed change in Project scope affecting the Architect (and that are the subject of a written agreement for Additional Services between the Owner and the Architect).

§ 2.2 The Architect shall meet a standard of professional skill and care used by architects on similar projects, whether such similar projects can be found locally, regionally or nationally. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care.

§ 2.2.1 The Architect hereby warrants that it (and the individual architects and engineers it employs on this Project) are registered, licensed and authorized to practice Architecture (or Engineering, as the case may be) as required by law of the State of North Carolina. The Architect warrants that its designs, Construction Documents, and Services shall conform to all federal, state, and local statutes and regulations governing its Services, the Project, and the Work. The Architect agrees and acknowledges that his duty is non-delegable—and that the Architect, by signing drawings or preparing Construction Documents to submit for purpose of obtaining building and other governmental permits, shall be deemed to certify that it has taken every reasonable measures to ascertain what codes apply to the Project and has applied them accordingly. Nothing in this Agreement shall be construed to eliminate or diminish the Architect's responsibility for compliance of its design, its Construction Documents, and its Services provided with local, state, and federal statutes and regulations.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. This designation shall be submitted in writing for the Owner's prior approval. Once approved, the designated representative shall not be changed without the Owner's written authorization.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the insurance requirements of Exhibit __B__, "Insurance Requirements" for the duration of this Agreement.

§ 2.6 (G.S. Chapter 133) The Architect shall comply with applicable provisions of N.C. General Statutes Chapter 33, Article 1.

§ 2.7 (Approvals) The Owner's approvals of documents and other items, e.g., in Sections 3.3, 3.4 and 3.5, shall not constitute waivers or releases of the Architect's duty to provide the documents and other items in accordance with this Agreement and in accordance with applicable professional standards.

§ 2.8 The Architect shall prepare designs and Construction Documents so that the Project can be built within the Sated Limitation of the Cost of the Work (SLCW) specified in Exhibit A, Section A.1.3.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect shall provide all the usual and customary professional services necessary for the complete design and construction documentation of the Project. The Architect agrees that the Basic Services Fee, as stated in Article 11, represents adequate and sufficient compensation for its timely provision of all professional Basic Services (including those of its consulting structural, mechanical, electrical, plumbing, and civil, and other consulting engineers) necessary to completely design the Project and prepare Construction Documents that fully indicate the requirements for construction of the Work, whether or not those Services are individually listed or referred to in this Agreement, the only exceptions to this being: (1) the cost of those services that are provided by third parties and that are expressly designated herein as being "the Owner's responsibility" or "Owner-provided"; and (2) the cost of those engineering or consulting Services that become necessary as a result of an Owner-directed change in Project scope affecting the Architect (and that are the subject of a written agreement for Additional Services between the Owner and the Architect).

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants when that information is transmitted by the Owner to the Architect and is expressly designated in writing by the Owner to be reliable. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 *[Intentionally omitted]*.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall prepare designs and documents in accordance with applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services and prepare designs and documents accordingly. As part of this review, the Architect shall attend a series of meetings with the Owner's project team and the Architect's consultants.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in

terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. One purpose of the review is to contain costs within the budget limits.

§ 3.2.4 Based on the Project's requirements, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may, if requested by Owner, include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work. Architect shall provide for the Owner's approval a written itemized estimate of the Cost of the Work based upon the Schematic Design package produced by the Architect and **at a level of detail satisfactory to the Owner, estimates of Cost of the Work, including the cost of each category of work involved**, with costs projected to the scheduled date of completion of the Bidding and Negotiation Phase of Services. If that estimate does not conform to the initial Owner-provided Stated Limitation on Cost of the Work (SLCW), as set forth in Exhibit A Section A.1.3 herein, and any Owner-approved amendments thereto, the Architect shall provide a written statement to the Owner describing the specific reasons for the deviation and suggesting alternative designs or changes that can be made to the design in order to bring the Cost of the Work within the then-current SLCW.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval in writing.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements or the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval in writing. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, landscape architectural, civil engineering, structural, mechanical, interior designs, and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 Architect shall provide for the Owner's approval a written itemized estimate of the Cost of the Work based upon the Design Development package produced by the Architect, with costs projected to the scheduled date of completion of the Bidding and Negotiation Phase of Services. If that estimate does not conform to the initial Owner-provided Stated Limitation on Cost of the Work (SLCW), as set forth in Exhibit A, Section A.1.3 herein, and any Owner-approved amendments thereto, the Architect shall provide a written statement to the Owner describing the

specific reasons for the deviation and suggesting alternative designs or changes that can be made to the design in order to bring the Cost of the Work within the then-current SLCW.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, including the estimate required under Section 3.3.2 above, and request the Owner's approval. If requested by the Owner, the Architect shall assist the Owner in securing at least one independent estimate of Cost of the Work from qualified construction estimators. The services shall include providing detailed estimates of Cost of the Work. This requirement may be moved to the end of the Schematic Design Phase if in the opinion of the Architect and the Owner enough information has been produced in that phase to generate a reliable budget projection.

§ 3.3.4 (Advise on Tests) To the extent appropriate during this phase, the Architect shall advise the Owner of the advisability of the Owner's arranging for the tests, inspections, and reports referred to in Section 5.7.

§ 3.3.5 (Review for Code Compliance) The Architect shall submit the Design Development Documents for approval by the applicable City/County planning governing body for its review for compliance with applicable code requirements before proceeding to the Construction Documents Phase. If appropriate, this requirement may likewise be moved to the end of the Schematic Design Phase.

§ 3.3.6 (Revise Documents) To the extent the Owner reasonably requests, the Architect shall revise the Design Development Documents to the extent that the revisions are not inconsistent with the program referred to in Section 3.2.5 and the Schematic Design approval referred to in Section 3.2.7.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall indicate in detail the materials, systems, and other requirements for construction of the Work.

§ 3.4.2 The Architect shall prepare Construction Documents that conform with the laws, codes, ordinances, regulations, and other requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 Upon 75% completion of the Construction Documents Phase of Services, the Architect shall provide for the Owner's approval a written, itemized estimate of the Cost of the Work—with costs projected to the scheduled date of completion of the Bidding and Negotiation Phase of Services. If that estimate does not conform to the initial Owner-provided Stated Limitation on Cost of the Work (SLCW), as set forth in Exhibit A Section A.1.3 herein, and any Owner-approved amendments thereto, the Architect shall provide a written statement to the Owner describing the specific reasons for the deviation and suggesting alternative designs or changes that can be made to the design in order to bring the Cost of the Work within the then-current SLCW..

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, as amended, and request the Owner's approval.

§ 3.4.6 (Advise on Need for Information) To the extent appropriate during this phase, the Architect shall advise the Owner of the advisability of the Owner's arranging for the tests, inspections, and reports referred to in Section 5.7.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.2.4 The bidding may include two or more rounds of soliciting, receiving, and processing bids. The number of rounds will be set in the Owner's discretion. As part of Basic Services, the Architect shall attend up to two pre-bid conferences with prospective bidders. The services shall include modification of the drawings, specifications, and other documents. To the extent required by law or requested by the Owner, the bidding may provide for multiphase and single phase bids.

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction (as amended and supplemented with city made modifications). Architect shall revise and issue the General Conditions of the Contract for Construction (AIA form A201-2007) in accordance with Owner's instructions and consistent with the duties of the Architect as set forth in the revised A201-2007. The Owner and Architect shall amend this Agreement to reflect material changes in Services required by those instructions.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents and in A201-2007 (as amended and supplemented with city made modifications). The

Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 The Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction to determine the progress and quality of the portion of the Work completed, and to determine if the Work is proceeding in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner informed in writing of the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect shall visit the Site at least once every other week, unless the Owner's representative agrees that fewer visits are appropriate.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. If the Architect does not reject non-conforming work, the Architect shall demand in writing that the Contractor bring the non-conforming Work into compliance with the Contract Documents; and, if the Contractor's efforts to do so are not begun and completed expeditiously, the Architect shall report that failure to the Owner in writing, stating: (a) the problem; (b) the reasons for the actions taken by the Architect; (c) what, if any, response has been forthcoming from the Contractor; and (d) what actions by the Owner and/or Contractor are needed or expected. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the requirements indicated in or reasonably inferable from the Contract Documents and shall be in writing or in the form of Drawings. Where approved in writing by the Owner in advance, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents. To the extent the Contract Documents do not permit the Owner to make final decisions on aesthetic matters, then this Section shall be deemed modified by requiring the Architect to consult the Owner before making a decision on matters relating to aesthetic effect. To the extent that the Contract Documents permit the Owner to make final decisions on aesthetic matters, this Section shall be of no effect. This Section shall control over Section 4.2.13 in the General Conditions.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007 (as amended and supplemented with city made modifications), the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and after consultation with the Owner shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and

inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals (including Shop Drawings, Product Data and Samples, *etc.*) as necessary to ascertain their conformance with the requirements for the Work as indicated in the Contract Documents. The Architect shall determine what aspects of the Work shall be the subject of submittals. If work proceeds without appropriate submittals or approvals, the Architect shall notify the Contractor and the Owner that such work will not be approved or accepted and will not be certified for payment. The Architect's review shall not be conducted for the purposes of confirming dimensions or quantities in those submittals except to the extent that the Contractor has requested the assistance of the Architect to determine certain dimensions because those indicated in the Construction Documents conflict with existing field conditions or because the dimensions in the Construction Documents contain erroneous, inconsistent, or incomplete information or dimensions for which clarifications are needed and can be supplied by the Architect. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. Nothing in this Agreement shall be construed as an Owner's authorization to the Architect to delegate design responsibility otherwise required of Architect by the terms of this Agreement. Except for delegation to consulting engineers who are responsible to, and in privity with, the Architect, any delegation of design responsibility by the Architect must be specifically authorized in writing, in advance, by the Owner, which authorization can be withheld by the Owner for any reason.

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect shall acknowledge the receipt of each Contractor-generated Request for Information (RFI) within seven (7) days after receiving it. The Architect shall issue a written answer for each RFI simultaneously to the Contractor and the Owner (along with necessary descriptive drawings, specifications, or other documents) with the promptness necessary to avoid unnecessary delay or cost to the Project, but in no case more than ten (10) days after the RFI is received by the Architect. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 Subject to the approval of the Owner, the Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. All authorization for minor change in the Work shall be in writing, or confirmed by the Architect in writing within 24 hours of authorization of the change. The Architect shall, immediately upon authorizing a minor change in the Work, provide written notice to the Owner thereof, describing the change, and confirming that the change will not affect Contract Time or Contract Sum. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall advise the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of ten (10) months from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

§ 3.6.6.6 (Record Documents) The Architect shall provide a reproducible copy of all drawings, specifications, and other documents to describe fully the finally constructed Work.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Owner may request other Additional Services of the Architect. Additional Services will be requested by the Owner, and confirmed in writing and approved by duly authorized representatives. Should the Owner request services that the Architect believes to be outside the scope of Basic Services, the Architect shall, before performing those services, inform the Owner in writing of the Architect's belief that the services requested are Additional Services, and shall provide an estimate in writing to the Owner of the probable total of the Additional Service Fees to be incurred in performing the services requested. If a reasonable reading of this Agreement is that a service is to be provided as a Basic Service, the listing of that service or a similar service under Article 4 is not intended to limit the performance of that service as a Basic Service. Without limiting the Owner's other rights and remedies, it is agreed that Services that are needed because of the failure of the Architect to comply with this Agreement or its duties to the Owner shall be performed or provided by the Architect without charge.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit. If the Additional Service indicated below are contemplated by Owner as inclusive of the Basic Services described in Section 2.1, the Additional Services line item should be deleted.)

| Additional Services | | Responsibility (Architect, Owner or Not Provided) | Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below) |
|---------------------|---|--|--|
| § 4.1.2 | Multiple preliminary designs | Not Provided | |
| | | | |
| | | | |
| § 4.1.6 | Building Information Modeling (E202™–2008) | Not Provided | |
| | | | |
| | | | |
| | | | |
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| | | | |
| | | | |
| | | | |
| § 4.1.17 | Facility Support Services (B210™–2007) | Not Provided | |
| § 4.1.18 | Tenant-related services | Not Provided | |
| | | | |
| § 4.1.20 | Telecommunications/data design | Not Provided | |
| § 4.1.21 | Security Evaluation and Planning (B206™–2007) | Not Provided | |
| § 4.1.22 | Commissioning (B211™–2007) | Not Provided | |
| | | | |
| § 4.1.24 | LEED® Certification (B214™–2012) | Not Provided | |
| § 4.1.25 | Fast-track design services | Not Provided | |
| § 4.1.26 | Historic Preservation (B205™–2007) | Not Provided | |
| § 4.1.27 | Furniture, Furnishings, and Equipment Design (B253™–2007) | Not Provided | |
| | | | |

§ 4.2 [Intentionally Omitted].

« »

§ 4.3 Additional Services may be provided after execution of this Agreement, but only if authorized in writing by the Owner prior to the Additional Services being provided and in accordance with the requirements of Section 4.1. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide Additional Services until the Architect receives the Owner's written authorization.

§ 4.3.2 [Intentionally Omitted].

§ 4.3.3 [Intentionally Omitted].

§ 4.3.4 If the services covered by this Agreement have not been completed within «18 » («Eighteen ») months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Architect and Owner acknowledge that the information provided is subject to change, but that the Basic Services Fees indicated herein take that change into account. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Architect shall prepare designs and Construction Documents so that the Project can be built within the Sated Limitation of the Cost of the Work (SLCW) specified in Exhibit A Section A.1.3.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. Owner may change the designated representatives upon written notice to the Architect; and Owner may modify the scope of authority of the designated representative in like manner. The Owner shall render decisions and approve the Architect's submittals in a timely manner.

§ 5.4 Where necessary for the Architect's performance of the Services, in the Architect's opinion, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, overall dimensions, and significant landscape features, including trees of three inches (3") or greater caliper; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Architect shall coordinate its Services and those of its Consultants with services provided by the Owner.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials, but only after the Architect has advised the Owner what test, inspections, and reports are required, and where needed for performance of the Work and where the need is not the result of the Architect's negligence or failure to perform.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests, where needed for performance of the Work. However, without limiting any other provisions of this Agreement, nothing herein is intended to require the Owner to provide such services to the Architect with respect to any matters (.1) that are subject to a dispute between the Owner and the Architect or (.2) to the extent that the request or need for such services results from the fault, breach of contract, or negligence of the Architect. Nothing in the foregoing provisions will allow the Owner to refuse to provide the Architect information in the Owner's possession which is needed by the Architect in order to address the matters of dispute so long as such information is not confidential or privileged information.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service, provided nothing in this Agreement shall be construed so as to require the Owner to determine the adequacy, accuracy, or sufficiency of the design, the Construction Documents, or the Architect's Services.

§ 5.10 *[Intentionally Omitted]*.

§ 5.11 The Architect shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Architect shall perform in a manner consistent with the obligations of the Architect as stated in this Agreement and in the Contract for Construction and the General Conditions of the Contract for Construction (as amended and supplemented with city made modifications). The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.13 (Owner's Approvals) The Owner's approval of plans, specifications or other documents shall not relieve the Architect of the responsibility to provide professional services in compliance with this Agreement.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect as part of Basic Services, represent the Architect's judgment as a design professional familiar with the construction industry. The Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 The Architect's Estimate of the Cost of the Work shall be projected to the scheduled date for completion of the Bidding and Negotiation Phase of Services.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's Stated Limitation on the Cost of the Work (SLCW), the Architect shall analyze its design and inform the Owner of more cost-effective ways to build and of any related compromises to quality of construction. However, when those conditions occur at the end of the Construction Documents Phase of Services either as a result of some other fault or negligence of the Architect the Owner may elect to compel one or more of the following measures (or some combination thereof): (1) approve an increased SLCW, in which case the basis of the Architect's compensation shall be fixed at the previously approved SLCW or the Architect's most recent Estimate of the Cost of the Work, whichever is less; (2) reject the design and/or Construction Documents, in which case the Owner's reproduction and delivery costs and other costs related to the rejected bidding or negotiation shall be deducted from Architect's compensation; (3) direct the Architect to revise the design and/or the Construction Documents in a manner that is agreeable to the Owner and that conforms to the SLCW, in which case these Services shall be provided by the Architect at no cost to the Owner and the cost of reissuance of documents shall be borne solely by the Architect; (4) revise the program or the Scope of Work, in which case the Services shall be provided by the Architect at no cost to the Owner and the cost of reissuance of documents (and damages suffered by the Owner as a result) shall be borne solely by the Architect; or (5) terminate this Agreement, in which case the Architect shall be compensated as otherwise provided herein for Services properly performed through the date of termination and reimbursable expenses less the Owner's reproduction and delivery costs and other costs related to the Architect's failure to design in accordance with the

SLCW. If amounts remaining within fees due the Architect are insufficient to cover the Owner's costs and damages due the Architect's negligent provision of Services or other failure to perform, the Architect shall immediately compensate the Owner for the difference.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal for reasons not related to the fault of the Architect, the Owner shall at the Owner's sole discretion

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 instruct the Architect to modify its design and the Construction Documents so the Cost of the Work will fall within the Stated Limitation of the Cost of the Work;
- .6 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect hereby assigns to the Owner, without reservation, all copyrights in all Project-related documents, models, photographs, and other expression created by the Architect. Among those documents are certain "Instruments of Service," including the design drawings and the Construction Documents. The Owner's obligation to pay the Architect is expressly conditioned upon the Architect's obtaining a valid written comprehensive assignment of copyrights from its Consultants in terms identical to those that obligate the Architect to the Owner as expressed in this subsection, which copyrights the Architect, in turn, hereby assigns to the Owner. The Owner, in return, hereby grants the Architect and its Consultants a revocable, nonexclusive license to reproduce the documents for purposes relating directly to the Architect's performance of its obligations under this Agreement for the Architect's archival records, and for the Architect's reproduction of drawings and photographs in the Architect's marketing materials, provided that the Project-related contents of those materials are approved as requested in Section 7.3 of this Agreement. This nonexclusive license shall terminate automatically upon the occurrence of either a breach of this Agreement by the Architect or the accused commission by the Architect of a tort or a crime affecting the Owner or the Project or upon termination of this Agreement. This nonexclusive license is granted to the Architect alone and shall not be assigned by the Architect to any other person or entity, except that the non-exclusive license granted in this Agreement to the Architect for purposes of the Architect's performance hereunder may be sub-licensed to the Architect's Consultants (with the same limitations). Subject to the foregoing, this nonexclusive license shall terminate automatically upon an Architect's assignment of this nonexclusive license to another or its attempt to do so.

§ 7.3 The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement.

§ 7.3.1 To the extent that liability arises from misuse of the Instruments of Service by the Owner or another architect or engineer, the Architect shall not be responsible for that misuse. If the Owner uses the Instruments of Services for purposes including additions to and modifications of the Project, and for other projects, the Owner shall indemnify the Architect for losses, including reasonable attorneys' fees, suffered by the Architect as a result of the use of the design and these documents for such other purposes. If these documents are used for other purposes, the Owner shall see that they are modified (a) to indicate that the Architect did not prepare them for such other purposes and is not responsible for their use in connection with such other purposes and (b) to delete the Architect's name and seal from the documents (where permitted or required by law).

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. No other Project-related data, expression, or documents may be reproduced by the Architect or its Consultants for any other purposes without the express written permission of the Owner.

§ 7.5 If the Owner subsequently reproduces Project-related documents or creates a derivative work based upon Project-related documents created by the Architect, the Owner shall (where permitted or required by law) remove or completely obliterate the original professional's seals, logos, and other indications on the documents of the identity of the Architect and its Consultants.

§ 7.6 The Architect shall maintain the confidentiality of all Project documents and information and shall not publish or in any way disseminate or distribute any Project-related documents, including, but not limited to, correspondence, estimates, drawings, specifications, photographs, or any other material relating to the Project without the express written authorization of the Owner or as required by law or to defend any claim asserted against the Architect.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued, and the applicable statutes of limitations shall commence to run, either upon the date of Substantial Completion (for acts or failures to act occurring before Substantial Completion of which the Owner was aware) or when the Owner should have reasonably discovered the acts, omissions, events, or circumstances giving rise to delay or damages to the Owner or the Project, whichever occurs later; but in no case shall an action be brought more than twelve years after the Date of Substantial Completion.

§ 8.1.2 To the extent damages are covered by proceeds received by the claimant from property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 *[Intentionally Omitted]*.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be according to the process adopted by the State Building Commission pursuant to N.C.G.S. 143-135.26(11).

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Owner is located as indicated in page one of this Agreement, unless another location is mutually agreed upon.

§ 8.2.4 *[Intentionally Omitted]*.

§ 8.3 *[Intentionally Omitted]*

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 The Architect shall give the Owner twenty-one (21) days written notice of the Architect's intention to terminate or suspend provision of Services. This notice shall detail the Architect's specific reason(s) for its intended termination or suspension and shall state with specificity the means by which the Owner may cure the alleged reason.

§ 9.2 If the Owner fails to make payments to the Architect that are otherwise due hereunder and are not subject to a good faith dispute, the Architect shall give the Owner fourteen (14) days' advance written notice of its intention to suspend Services. If the Owner fails either to pay or justify its lack of payment of undisputed amounts in accordance the terms of this Agreement Architect may give notice of suspension and suspend the Services five (5) days thereafter. Services shall otherwise be performed continually and expeditiously, including during the pendency of disputes. The suspension shall cease when payment in full of undisputed amounts is made.

§ 9.3 Unless otherwise noted herein or indicated in the Project Schedule most recently approved by the Owner, or unless caused by the Architect if the Project is suspended by the Owner for more than ninety (90) consecutive days, the Architect shall be compensated for Services that were fully and satisfactorily performed prior to suspension and shall receive equitable payment for the Architect's demonstrated actual costs to remobilize to continue performance when Services are recommenced by request of the Owner.

§ 9.4 This Agreement may be terminated by the Owner, with or without cause, for the Owner's convenience upon not less than seven (7) days' written notice to the Architect. Should the Owner terminate this Agreement for cause, but that cause be subsequently found to be insufficient to support termination, the termination shall be deemed one of convenience.

§ 9.5 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

§ 9.6 *[Intentionally Omitted]*.

§ 9.7 *[Intentionally Omitted]*.

§ 9.8 (Termination Expenses) Any references to Termination Expenses elsewhere in this Agreement shall be of no effect.

§ 9.9 (Cooperation after Termination) In case of any termination, the Architect shall

- .1 cooperate with the Owner in completing the Project;
- .2 provide information requested by the Owner in connection with completion of the Project;
- .3 provide a reproducible copy of all Drawings, Specifications and other documents, even if incomplete, prepared by the Architect up to the date of termination; and
- .4 if requested by the Owner, provide a reproducible copy of all Drawings, Specifications and other documents to describe the constructed Work as of the date of termination.

Services provided after termination shall be compensated as Additional Services.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 (Place of Project; Choice of Law and Forum) This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction, as amended and supplemented with city made modifications, to the

extent that said conditions and modifications do not conflict with this Agreement. However, except to the extent the context otherwise requires, the "Project" is described on page 1 of this Agreement.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. The Architect may not assign its interests or obligations under this Agreement without the written consent of the Owner, which consent may be withheld by the Owner for any reason.

§ 10.3.1 The Services provided by the Architect are deemed to be personal in nature. The Architect shall appoint to Project leadership positions those persons listed in Section A.2.5.3 of Exhibit A hereto (Project Team). The Architect shall not make substantial changes to this appointed Project Team without the written approval of the Owner. Should circumstances beyond the control of the Architect compel changes to this Project Team, the Architect shall submit the credentials of the Architect's proposed replacement Project Team member(s) for the Owner's approval, which approval shall not be unreasonably withheld. However, nothing in this clause shall be construed to limit the Owner's rights to terminate this Agreement, as provided for herein, due to a change in Project Team composition. Termination by the Owner as a result of a change in the Project Team shall be deemed a justifiable Termination for Cause.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review. If the Owner requests the Architect to execute consents, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.5.1 The Owner shall enjoy the same benefits and rights as to the Architect's Consultants as the Architect enjoys with respect to its Consultants. The Architect shall enter written contracts with its Consultants that impose upon its Consultants the same duties and obligations to the Owner as the Consultant has to the Architect. Should the Owner terminate this Agreement with the Architect, the Owner shall, upon Owner's request, obtain assignment of the Consultant's agreement(s) with the Architect. That assignment does not change the fact that the Owner has no obligation to pay Consultants any amounts whatsoever on this Project, except prospective fees expressly agreed to by the Owner after Owner's acceptance of assignment of the Consultant's agreement(s). At the request of Owner, the Architect shall supply the Owner with copies of the Architect's agreements with its Consultants.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site, unless the hazardous materials or toxic substances were brought to the Project by the Architect pursuant to the terms of the Contract Documents. Should the Architect become aware of the presence of hazardous materials or toxic substances on the Project site, it shall immediately report that presence to the Owner in writing.

§ 10.7 The Architect may include in its portfolio or promotional materials exterior photographs and site plans of the Project; provided, however, images used may not include any proprietary or confidential information. Exterior photographs of the completed Project may be displayed by the Architect in its promotional materials, but the display cannot include floor plans, area and cost information, or other program-specific information without the advance written consent of the Owner.

§ 10.8 Architect shall consider all Project-specific information, except Project name and location, to be confidential and proprietary to the Owner. All designs, drawings, Instruments of Service, specifications, models, computer models, and other products of the Architect's Services shall be deemed to be the Owner's confidential and proprietary information. No confidential and proprietary information of the Owner shall be disclosed to others by the Architect except to: (1) the Architect's Consultants and employees as necessary to perform their portion of the services; (2) those who have an official need to know the content of the information in order to perform services or construction solely and exclusively for this Project; (3) building and government officials who need to know the content of the information in order to approve construction, to administer laws, codes, and regulations, or to perform their duties as to this Project; and (4) other consultants and Contractors whose contracts include similar restrictions

on the use of information as needed to preserve for the Owner the confidentiality of proprietary or Project-related information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

«The Owner shall pay in accordance with Subparagraph 11.5 and in accordance with Exhibit E, Architectural Fee Schedule & Hourly Rate, Basic Compensation in the amount of the following stipulated sum: Seventy Eight Thousand Dollars (\$78,000), plus the allowance identified under Section 11.2 for a total not to exceed contract amount of Eighty Nine Thousand Dollars (\$89,000).»

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

«Allowance for Valley Springs Park
Site Survey Fees, Geological Investigation, Environmental Testing for an additional fee not to exceed Nine Thousand Dollars (\$9,500.00)

Allowance for West Point on the Eno Park
Geotechnical Investigation for an addition fee not to exceed One Thousand Five Hundred Dollars (\$1,500.00)»

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

« »

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus « zero percent » percent (« 0 » %), or as otherwise stated below:

« »

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

| | | | | |
|------------------------------|----------------|-----------|-----|----|
| Valley Springs | | | | |
| Schematic Design Phase | «\$8,000.00» | percent (| 10 | %) |
| Design Development Phase | «\$16,000.00 » | percent (| 21 | %) |
| Construction Documents | «\$17,500.00 » | percent (| 22 | %) |
| Phase | | | | |
| Bidding or Negotiation Phase | «\$2,000.00 » | percent (| 03 | %) |
| Construction Phase | «\$4,500.00 » | percent (| 06 | %) |
| West Point on the Eno Park- | «\$30,000.00 » | | 38 | %) |
| Lump Sum | | | | |
| Total Basic Compensation | one hundred | percent (| 100 | %) |

§ 11.6 *[Intentionally Deleted]*

§ 11.7 The hourly billing rates for Additional Services performed by the Architect and the Architect's consultants, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« Approved Additional Services shall be billed at the following hourly rates

| Kimley Horn | |
|-----------------------------------|-------------|
| Principal | \$225-\$250 |
| Sr. Professional | \$155-\$225 |
| Professional | \$110-\$155 |
| Sr. Technical Support | \$80-\$155 |
| Support Staff | \$75-\$115 |
| Gurlitz Architects | |
| Principal Architect | \$200 |
| Project Architect | \$170 |
| Designer | \$95 |
| Con.Admin. Arch | \$125 |
| Administrative | \$85 |
| PME Principal | \$175 |
| PME Designer | \$95 |
| JC Waller & Associates | |
| Project Manager III | \$150 |
| Project Manager II | \$125 |
| Civil Engineer Tech III | \$85 |
| Civil Engineer Tech II | \$70 |
| Construction Inspector III | \$85 |
| Administrative Assistant | \$36 |

»

Employee or Category

Rate

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 dedicated data and communication services, teleconferences, Project Web sites, and extranets;³
Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials not prepared "in-house" by the Architect and requested by the Owner
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants; and,
- .9 Site office expenses..

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus « zero percent » percent (« 0 » %) of the expenses incurred.

§ 11.9 [Intentionally Omitted]

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of « » (\$ « ») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the first invoice. If full credit applied to the initial invoiced amount exceeds the amount due, then the credit shall be applied to each subsequent invoice until the full credit has been exhausted; or, in the alternative, the Owner may request a refund by the Architect of the Initial payment should progress of the Services be inadequate to fully apply the credit for the initial payment to the first and immediately subsequent invoices.

§ 11.10.2 Payments not subject to a good faith dispute are due and payable 45 days from the Owner's receipt of the Architect's invoice providing adequate documentation. The invoice is rebuttably presumed received on the first weekday that is not a legal holiday 3 days after mailing. The interest rate shall be four percent (4 %) per year simple interest.

§ 11.10.3 *[Intentionally Omitted]*

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be submitted to the Owner when payment is requested. The records shall be kept in such form and detail as will clearly identify all relevant charges and costs and the bases thereof, except to the extent the Owner's representative and the Architect's representative concur otherwise in writing. Said concurrence is valid without an amendment to this Agreement. The Architect shall maintain all such records and provide the Owner access to them, and the right to copy them, until at least four years after Architect's last request for payment under this Agreement

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

« **§ 12.1** (Representatives) The Owner's representative, authorized to act on the Owner's behalf, shall be: Marilee Martin. The Architect's representative, authorized to act on the Architect's behalf, shall be: Sal Musarra, PA. Either party may substitute another representative by giving notice to the other party.

§ 12.2 (Meetings; Use of Systems)

§ 12.2.1 (Governing Body Meetings) As part of Basic Services, the Architect shall attend and discuss the Project at one City Council meeting, one Council committee meeting, and one meeting of the Board of County Commissioners.

§ 12.2.2 (City/County Planning Governing Meetings) As part of Basic Services, the Architect shall attend and discuss the Project at all required meetings.

§ 12.2.3 (Other Meetings) As part of Basic Services, the Architect shall attend and discuss the Project at all required meetings as requested by Owner:

§ 12.3 (Liquidated Damages)

☐ This Section 12.3 applies to this Agreement. The schedule referred to in this Section 12.3 is contained in

X ☐ This Section 12.3 does not apply to this Agreement. If this box is checked, then none of Section 12.3 or its Subsections is part of this Agreement.

This Section 12.3, including its Subsections, supersedes the original (i.e., as published by the AIA) version of Article 2 to the extent of any conflict. References to the schedule in this Section are intended to refer to the schedule as amended from time to time with the consent of the Owner.

§ 12.3.1 (Design Development Phase) If due solely to the fault of the Architect, the Design Development Phase is not completed by the schedule's deadline, the Owner shall withhold _____ percent of the total compensation for that phase. If the Construction Documents Phase is completed by the schedule's deadline, the Owner shall release said withholding.

§ 12.3.2 (Construction Documents Phase) If due solely to the fault of the Architect, the Construction Documents Phase is not completed by the schedule's deadline, the Owner shall retain the amount withheld pursuant to Subsection 12.3.1 as liquidated damages. If due solely to the fault of the Architect, the Construction Documents Phase is not completed by the schedule's deadline, the Owner shall retain as liquidated damages _____ dollars (\$) per day for each day after the deadline that the phase is incomplete for the first 7 days and _____ dollars (\$) per day for each day thereafter. If any part of those delays is caused in whole or in part by the Owner, liquidated damages shall not be charged for that

portion of the delay time.

§ 12.3.3 (Liquidated nature) The parties recognize that the Owner will suffer financial loss if the services of the Architect are not completed on schedule. They also recognize the delays, expense, and difficulty to both parties involved in proving or contesting the amounts of those losses. Instead of requiring proof of those amounts, it is agreed that the Architect shall be liable for the sums specified in this Section 12.3 as liquidated damages, and not as penalties. The amounts stated as liquidated damages are agreed to be reasonable estimates of the Owner's losses and expenses for delays, including inspections, architectural and engineering services, and administrative costs.

§ 12.4 (Notice) Unless the context otherwise requires, all notices and other communications required or permitted by this Agreement shall be in writing and shall be given either by personal delivery, fax, or by registered or certified United States mail, return receipt requested, addressed as follows:

To the City:

Marilee Martin
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701

The fax number is (919) 560-4197

The email address is marilee.martin@durhamnc.gov

To the Architect:

Saul Musarra, PLA
Kimley-Horn and Associates, Inc.
421 Fayetteville Street
Suite 600
Raleigh, NC 27601

The Architect's fax number is (919) 677-2050.

The Architect's email address is Sal.Musarra@kimley-horn.com.

Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Agreement shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

§ 12.5 (Indemnification).

§ 12.5.1 (Indemnification for Charges Arising from Professional Services). Solely with respect to Charges which arise out of Architect's performance of professional services hereunder, to the maximum extent allowed by law, the Architect shall defend, indemnify, and save harmless Indemnitees from and against all such Charges that arise in any manner from, in connection with, or out of Architect's performance of professional services under this Agreement, but only to the extent such Charges are caused by the professional negligence of the Architect or its subconsultants or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. For purposes of this Section 12.5.1 "professional negligence" shall mean any failure on the part of the professional to comply with the professional standard of care legally required or reasonably expected under the circumstances in the performance or non-performance of professional services hereunder.

§ 12.5.2 (Indemnification for Charges Not Arising from Professional Services). With respect to all Charges other than those which arise out of Architect's performance of professional services hereunder, to the maximum extent allowed by law, the Architect shall defend, indemnify, and save harmless Indemnitees from and against all such

Charges that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of the Architect or subconsultants or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this Section 12.5.2 the Architect shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

§ 12.5.3 Definitions. As used in Sections 12.5.1 and 12.5.2 above and Section 12.5.4 below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this Agreement). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Architect.

§ 12.5.4 (Other Provisions Separate). Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this Agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.

§ 12.5.5 (Survival). This section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of the Architect under this Agreement.

§ 12.5.6 (Limitations of the Architect's Obligation). Sections 12.5.1 and 12.5.2 above shall not require the Architect to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

§ 12.6 (SDBE and Equal Opportunity) The Architect shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Architect to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this Agreement, and State law. The Participation Plan submitted in accordance with that article is binding on the Architect. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Architect's alleged violations of its obligations under Article III of Chapter 18 and not to the Architect's alleged violations of other obligations.

§ 12.7 (Compensation for Architect's Errors) If the Architect creates plans or specifications containing an error that cause actual construction of a portion of Work that needs to be changed solely because of the Architect's error, the Architect will pay the Owner all costs of correcting the error, including an amount to compensate the Owner for time spent by Owner's employees because of the error without regard to what other services those employees might have done for the Owner had the error not occurred.

§ 12.7.1 (Unforeseen Conditions) An error occurring because of physical conditions that were both not in fact known to the Architect or its consultants and not readily apparent to the Architect or its consultants shall not be grounds for payment under this Section 12.7.

§ 12.7.2 (Cost of Employees' Time) The cost of the employees' time will be calculated as follows: the time spent by any salaried employee of the Owner because of the error shall be compensated at an hourly rate equal to the employee's gross salary during the applicable fiscal year of the Owner divided by the number of hours worked by that employee for the Owner during that fiscal year.

§ 12.7.3 (No Payment Below 1% or Above Deductible) The Architect shall not be required to make any payment under this Section 12.7 until the total amounts that would be payable under the preceding sentences of this Section exceed one percent (1%) of the latest preliminary estimate of Cost of the Work, and the amount payable hereunder shall be only that amount that exceeds said 1%. The payments made under this Section shall not exceed the insurance deductible of the Architect's professional liability insurance.

§ 12.7.4 (Limits on Double Payments) If this Section 12.7 is applied to compensate the Owner for an error (or if it is applied but the Architect has not paid anything pursuant to it because said 1% has not been exceeded), the Architect shall not owe the Owner any other compensation to remove the erroneously built Work and replace it with correct Work. However, the payment of such compensation or the application of this Section shall not affect liability for personal injury or damage to property. (In the preceding sentence, "damage to property" excludes the damage suffered by the Owner for the cost of replacing the erroneously installed Work for which this Section provides compensation, but it includes all other general, special, consequential, or other kinds of damage resulting from the error.)

§ 12.7.5 (Limit on Use of Payment against Architect) A payment by the Architect pursuant to this Section 12.7 is not admissible against the Architect in any legal action or proceeding other than to enforce this Section (e.g., it is not admissible in a personal injury action).

§ 12.7.6 (Nonpayment Hereunder Not to Prevent Other Claims) If this Section 12.7 is not applied so as to compensate the Owner for an error, this Section shall not be used to construe this Agreement so as to reduce any remedy that is available to the Owner because of that error. For example, to the extent an error is not compensated for because the amount exceeds the insurance deductible, the Owner will not be deemed to have waived a claim therefor.

§ 12.8 (Waiver) The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right, or remedy under this Agreement, shall not be construed as a waiver or relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by the party against whom the waiver is asserted."

§ 12.9 (Headings) The headings to articles, Sections, Subsections, and Subsubsections in this Agreement are included for reference only, and shall not be construed to affect the meaning of this Agreement."

§ 12.10 (Assignment of Subcontracts) All contracts between the Architect and others to provide services on the Project, in which the services are expected to take more than one month to complete and the compensation is expected to exceed \$5,000, shall contain a provision allowing the Owner or a person designated by the Owner to assume the Architect's rights under the contract so as to require continued performance according to the terms of the contract, provided, however, that neither the Owner nor the person designated by the Owner shall be liable for breaches or other events or occurrences that took place before it assumed the contract. The Architect will demonstrate compliance with this Section when requested by the Owner.

§ 12.11 (Reimbursable Expenses) *(If no Reimbursable Expenses are to be paid, check the first box (12.11.1). If some Reimbursable Expenses are to be paid but not in accordance with 12.11.2, check the first box and the third box (12.11.3), and then in the blank for the third box, set out the agreement with respect to Reimbursable Expenses.)*

☒ **§ 12.11.1** Delete Section 11.8 of this Agreement, including all Subsections and Subsubsections in Section 11.8. Any references to Reimbursable Expenses in this Agreement shall be of no effect, except as may be provided in Subsection 12.11.3.

☐ **§ 12.11.2** In Subsubsection 11.8.1 delete these four Subsubsections: 11.8.1.4, 11.8.1.5, 11.8.1.6, 11.8.1.7, and 11.8.1.8.

☐ **§ 12.11.3**

§ 12.12 (Certificates)

☐ **§ 12.12.1 (Certificates)** The Owner's representative and the Architect's representative have discussed Section 10.4 of this Agreement.

☐ **§ 12.12.1 (Certificates)** The Owner's representative and the Architect's representative have not discussed Section 10.4 of this Agreement because:

§ 12.13 The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any defect or omission in the design of the Project or in the Construction Documents, including but not limited to errors, omissions, or inconsistencies in the Architect's Instruments of Service.

§ 12.14 (Other)

§ 12.14.1 E-Verify requirements. (a) If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (a) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (a) in entering into this contract. (b) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

§ 12.14.2 Iran Divestment Act Certification. The Contractor certifies that, if it submitted a successful bid for this contract, then as of the date it submitted the bid, the Contractor was not on the Iran List. If it did not submit a bid for this contract, the Contractor certifies that as of the date that this contract is entered into, the Contractor is not on the Iran List. The Contractor shall not utilize on this contract any subcontractor that is identified on the Iran List. In this Iran Divestment Act Certification section, "Contractor" means the person entering into this contract with the City of Durham, and "Iran List" means the Final Divestment List – Iran and the Parent and Subsidiary Guidance List – Iran, both as issued by the N.C. State Treasurer to comply with G. S. 143C-6A-4 of the N.C. Iran Divestment Act.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect, as modified
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

« »

- .3 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

« Exhibit A, Initial Information
Exhibit B, Insurance Requirements »

This Agreement entered into as of the day and year first written above.

CITY OF DURHAM

ATTEST:

By: _____

Preaudit Certificate:

Signature section and notarization section for Architect:

Kimley-Horn and Associates, Inc.

By: _____ (SEAL)

Title of officer: _____

State of _____

ACKNOWLEDGMENT BY CORPORATION

County of _____

I, a notary public in and for the aforesaid county and state, certify that _____ personally appeared before me this day and stated that he or she is

(~~strike through the inapplicable:~~) chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of

Kimley-Horn and Associates, Inc., a corporation, and that by authority duly given and as the act of the corporation, he or she signed, under seal, the foregoing contract or agreement with the City of Durham. This the _____ day of _____, 20____.

My commission expires:

Notary Public